IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.227 OF 2004

Sushant @ Sanjay Jagannath Patil ... Applicant

versus

The State of Maharashtra ... Respondent

...

Mr.B.G. Vaidya, for the Applicant.

Mr.D.R. More, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

9th March 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. More waives notice for the Respondent. As short question is involved, petition is taken up for final disposal forthwith by consent.

. This petition takes exception to the

order dated 12th September 2003 rejecting the Petitioner's application for return of property, recovered from his possession, being cash amount of Rs.2,17,500/- as the Petitioner has been discharged in terms of order dated 16th September 2000 by the Sessions Court, Pune.

. The main reason, which has weighed with the Court below in rejecting the application of the Petitioner is that there is no evidence on record to show that the amount belongs to the Petitioner exclusively. It is, however, not in dispute that the amount of Rs.2,17,500/- in cash was recovered from the possession of the Petitioner during the investigation of the criminal case. The Petitioner has already been discharged in respect of that case. No other person has come forward to claim the ownership of the cash amount so far.

. In such a situation, the appropriate course for the lower Court would have been to allow the application of the Petitioner requiring him to execute indemnity bond and also provide adequate security to return and produce the

amount as and when required in the course of the trial, including with some reasonable interest, if required. In other words, the application as presented by the Petitioner could not have been dismissed in toto.

. Accordingly, this petition succeeds on the following terms.

> The application preferred by the Petitioner being Exhibit 10 in Criminal Miscellaneous Application No. 122 of 2003 before the 10th Additional Sessions Judge, Pune, is granted on condition that the Petitioner shall furnish indemnity bond to the trial Court and further adequate security with undertaking to bring back the said amount or to produce the same before the Court when required at the trial, including of return of the said amount with reasonable interest at the end of the trial, if need arises. Ordered accordingly.

(A.M.KHANWILKAR,J.)